

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 21-11457-GAO

SHIRLEY A. GOODE and SEAN GOODE,  
Plaintiffs,

v.

DANIEL SMITH and CITY OF BOSTON,  
Defendants.

ORDER  
December 27, 2023

O'TOOLE, D.J.

After review of the briefing and oral argument on the matter, the Court DENIES the defendant's motion for summary judgment (dkt. no. 40) as to all counts. There are material facts in genuine dispute as to key issues in the case, particularly with respect to whether the plaintiffs' dog was charging at Officer Smith at the time of the shooting and whether Officer Smith's reaction was justified or not. In particular, the parties differ as to the question of the threat level posed by the dog and, consequently, whether a reasonable officer in Officer Smith's position would have believed that he had the right to defend himself by shooting the dog. Because of the genuine factual dispute on these issues, a determination whether Officer Smith is entitled to qualified immunity is also improper on the present record. See Sneade v. Rojas, No. CIV.A. 11-40061-TSH, 2014 WL 949635, at \*7 (D. Mass. Mar. 10, 2014). There are also triable factual issues relating to the other asserted claims.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.  
United States District Judge